

AUG 03 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

CARLOS SILVINO IBARRA;
MARIA DE LA LUZ IBARRA,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-70016

Agency Nos. A79-531-861
A79-531-862

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Carlos Silvino Ibarra and Maria De La Luz Ibarra, husband and wife and
natives and citizens of Mexico, petition for review of the Board of Immigration

* This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

Appeals’ (“BIA”) order denying their motion to reopen removal proceedings. We dismiss the petition for review.

The evidence petitioners presented with their motion to reopen concerned the same basic hardship grounds as their application for cancellation of removal. *Fernandez v. Gonzales*, 439 F.3d 592, 602-03 (9th Cir. 2006). We therefore lack jurisdiction to review the BIA’s determination that the evidence would not alter its prior discretionary determination that they failed to establish the requisite hardship. *See id.* at 600 (holding that 8 U.S.C. § 1252(a)(2)(B)(i) bars this court from reviewing the denial of a motion to reopen where “the only question presented is whether the new evidence altered the prior, underlying discretionary determination that [the petitioner] had not met the hardship standard.”) (Internal quotations omitted).

Petitioners’ contention that the BIA deprived them of due process in reviewing the evidence they submitted with their motion to reopen is not colorable. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005) (“[t]raditional abuse of discretion challenges recast as alleged due process violations do not constitute colorable constitutional claims that would invoke our jurisdiction.”).

Petitioners' remaining contentions lack merit.

PETITION FOR REVIEW DISMISSED.